

## Small Business Administration

## § 134.804

written protest file, arguments made in the appeal petition, and response(s) filed thereto.

### § 134.713 When is the record closed?

The record will close when the time to file a response to an appeal petition expires pursuant to § 134.710.

### § 134.714 When must the Judge issue his or her decision?

The Judge shall issue a decision, insofar as practicable, within fifteen (15) business days after close of the record.

### § 134.715 Can a Judge reconsider his decision?

(a) The Judge may reconsider an appeal decision within twenty (20) calendar days after issuance of the written decision. Any party who has appeared in the proceeding, or SBA, may request reconsideration by filing with the Judge and serving a petition for reconsideration on all the parties to the appeal within twenty (20) calendar days after service of the written decision. The request for reconsideration must clearly show an error of fact or law material to the decision. The Judge may also reconsider a decision on his or her own initiative.

(b) The Judge may remand a proceeding to the D/GC for a new WOSB or EDWOSB determination if the D/GC fails to address issues of decisional significance sufficiently, does not address all the relevant evidence, or does not identify specifically the evidence upon which it relied. Once remanded, OHA no longer has jurisdiction over the matter, unless a new appeal is filed as a result of the new WOSB or EDWOSB determination.

## Subpart H—Rules of Practice for Employee Disputes

SOURCE: 75 FR 47443, Aug. 6, 2010, unless otherwise noted.

### § 134.801 Scope of rules.

(a) The rules of practice in this subpart H apply to the OHA appeal under the Employee Dispute Resolution Process (EDRP). Standard Operating Procedure (SOP) 37 71 sets out the EDRP. It is available at <http://www.sba.gov/tools/resourcelibrary/sops/index.html> or

through OHA's Web site <http://www.sba.gov/oha>.

(b) The following rules, located in subparts A and B of this part, also apply to OHA appeals under the EDRP:

- (1) Definitions (§ 134.101);
- (2) Jurisdiction of OHA (§ 134.102(r) only);
- (3) Scope of the rules in this subpart B (§ 134.201(a), (b)(6), and (c) only);
- (4) Commencement of cases (§ 134.202(d) only, on deadlines and how to count days);
- (5) Filing and service requirements (§ 134.204);
- (6) Amendments and supplemental pleadings (§ 134.207);
- (7) Requirement of signature (§ 134.209);
- (8) Motions (§ 134.211);
- (9) Summary decision (§ 134.212);
- (10) Sanctions (§ 134.219); and
- (11) Review of initial decisions (§ 134.228).

### § 134.802 [Reserved]

### § 134.803 Commencement of appeals from AMO decisions.

(a) An appeal from an AMO decision must be commenced by filing an appeal petition within 15 days from the date the Employee receives the AMO's decision.

(b) If the AMO does not issue a decision, the appeal petition must be filed no sooner than 16 days and no later than 55 days from the date on which the Employee filed the original Statement of Dispute with the AMO.

(c) The rule for counting days is in § 134.202(d).

(d) OHA will dismiss an untimely appeal.

### § 134.804 The appeal petition.

(a) *Form.* There is no required format for an appeal petition. However, it must include the following:

- (1) A copy of the original Statement of Dispute;
- (2) A copy of the AMO's decision or other response, if any;
- (3) Statement of why the AMO's decision is alleged to be in error;
- (4) Any other pertinent information the OHA Judge should consider;
- (5) A request for mediation, if applicable;

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(6) The Employee's name, home mailing address, daytime telephone and facsimile numbers, e-mail address, and signature; and

(7) If represented by an attorney, the attorney's contact information and signature.

(b) *Service of the appeal petition upon the SBA.* The Employee must serve copies of the entire appeal petition upon three SBA officials:

(1) The AMO;

(2) Chief Human Capital Officer, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; and

(3) Associate General Counsel for General Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: [OGLService@sba.gov](mailto:OGLService@sba.gov), except that an employee of the Office of Inspector General (OIG) must serve it upon the Counsel to the Inspector General, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, e-mail: [ig.counseldiv@sba.gov](mailto:ig.counseldiv@sba.gov).

(c) *Certificate of Service.* The Employee will attach to the appeal petition a signed certificate of service meeting the requirements of § 134.204(d).

(d) The rules governing filing and service are in § 134.204.

(e) *Dismissal.* An appeal petition that does not meet all the requirements of this section may be dismissed by the Judge at his or her own initiative or upon motion of the SBA.

### § 134.805 After the appeal petition is filed.

(a) The AA/OHA will assign a Judge to adjudicate the case. If mediation is requested or offered, the AA/OHA will assign a different person to mediate the case.

(b) OHA will issue and serve upon the Employee and the SBA a notice and order informing the parties that an appeal has been filed, and setting the date for SBA's response and the close of record.

(c) The rules for amendments to pleadings and supplemental pleadings are in § 134.207.

(d) Unless otherwise instructed, OHA will serve all orders and the decision by U.S. Mail upon the Employee at his or

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her home address, or upon the attorney if represented by an attorney.

### § 134.806 Mediation.

Either the Employee or the SBA may request mediation, or OHA may offer mediation. OHA may designate a Judge or an OHA attorney to serve as a mediator. If the parties reach a settlement through mediation, they may file a joint motion to dismiss the appeal based on that settlement. If the parties do not reach a settlement, the mediation will conclude and the appeal will go to adjudication. An OHA-provided mediator will not be involved in a subsequent adjudication.

### § 134.807 SBA response.

(a) If the appeal goes to adjudication, SBA will file and serve the SBA's response to the appeal and a copy of the Dispute File.

(b) Unless the Judge orders a different date (either on his or her own initiative or on motion by a party), the SBA must file any response to the appeal petition no later than 15 days from the conclusion of mediation or 45 days from the filing of the appeal petition, whichever is later.

(c) The SBA's response and the Dispute File are normally the last submissions in an appeal, although the Judge may order or permit additional submissions. If a party wishes to file an additional submission, the party must file and serve a motion (see § 134.211) accompanied by the proposed submission.

### § 134.808 The decision.

(a) The Judge will decide the appeal within 45 calendar days (if practicable) from close of record. The decision will affirm, modify, remand, or reverse the AMO's decision.

(b) The standard of review and burden of proof will be determined by the specific issue presented.

(c) OHA's decision is an initial decision which becomes the final decision of the SBA 30 calendar days after issuance, unless a party files a request for review pursuant to § 134.809.

(d) OHA's decision is not precedential and it will not be published.